

Advisory Opinion

IECDB AO 2005-22

December 1, 2005

Patricia J. Lantz
Legal Counsel
Department of Administrative Services
Hoover Building, Level A
Des Moines, Iowa 50319

Dear Ms. Lantz:

This opinion is in response to your letter of November 28, 2005, requesting an opinion from the Iowa Ethics and Campaign Disclosure Board pursuant to Iowa Code section 68B.32A(11) and Board rule 351—1.2. We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapters 68A and 68B, Iowa Code section 8.7, and rules in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

FACTUAL STATEMENT:

We understand you request this opinion in your capacity as the Legal Counsel for the Department of Administrative Services (DAS). You advise us that the IowAccess Advisory Council has as one of its duties recommending information technology projects for funding to the Director of DAS. The Council entertains proposals from state agencies on projects to be funded and then makes its recommendations.

You also advise us that DAS houses the Vertical Infrastructure Advisory Committee. The Committee ranks proposals submitted by state agencies for routine and major maintenance projects. The rankings are then sent to the Governor's Office for approval. DAS acts as the project manager for most of the major maintenance projects and the departments receive various amounts of funding to accomplish the routine maintenance projects.

DAS is aware that recently enacted legislation requires all gifts, bequests, and grants received by an agency to be reported to the Board. You request an opinion concerning whether funding under the Council or Committee require the filing of a report under new Iowa Code section 8.7.

QUESTION:

Does Iowa Code section 8.7 require an agency to file a gift, bequest, or grant report when funding for a project is approved through the procedures of the IowaAccess Advisory Council or the Vertical Infrastructure Advisory Committee?

OPINION:

For purposes of public disclosure, the Board first notes that it has applied for funding through the IowaAccess Advisory Council and the Council has both approved and not approved proposed Board projects. The current members of the Board and the Board's current Executive Director do not recall submitting a project to the Vertical Infrastructure Advisory Committee.

We understand that the procedures for both the IowaAccess Advisory Council and the Vertical Infrastructure Advisory Committee involve state agencies submitting paperwork detailing the projects for which they seek funding. The agencies also appear before the respective bodies and answer questions or provide additional information concerning their proposals. The bodies then make determinations and recommendations concerning which proposals should receive funding.¹

In 2005 Iowa Acts, House File 810, section 27, the General Assembly enacted new Iowa Code section 8.7 that requires, in part, "all gifts, bequests, and grants received by a department or accepted by the governor on behalf of the state" to be reported to the Board and the Government Oversight Committee.² The Board is then mandated to file a report with the Legislative Services Agency disclosing each gift, bequest, or grant in excess of \$1,000 that was reported to the Board.

While the law does not define any of those terms, it seems clear that the procedures under both the IowaAccess Advisory Council and the Vertical Infrastructure Advisory Committee are similar to an agency seeking a grant from any other source. The agency submits paperwork explaining the project and why it should be funded, it appears before the body to answer questions and defend the proposal, and the body makes determinations thereon.

In addition, an agency receiving these funds would otherwise have to pay for the services being provided out of the agency's legislative appropriation. By receiving these funds agencies are obtaining services and are able to use their legislative appropriation for other purposes. Again, this is similar to the benefits obtained through any other grant.

We also note that the law does not distinguish the filing of a report based on the source of the original grant. Rather, that all grants are required to be reported. Thus, the fact that one state agency (DAS) is providing funding for these projects to other state agencies is not a factual or legal distinction under the statute.

Therefore, for all of these reasons the Board believes that approved projects under both the IowaAccess Advisory Council and the Vertical Infrastructure Advisory Committee are

“grants.” Thus, approved projects trigger the disclosure requirement to the Board under new Iowa Code section 8.7.

In closing, the Board notes that a meeting was held between DAS and the Board’s Executive Director/Legal Counsel. Based on that meeting, DAS has offered, pending the determinations in this opinion, to file information from both the IowaAccess Advisory Council and Vertical Infrastructure Advisory Committees that would constitute filings for all agencies receiving approved funding. The Board accepts this offer and will view such filings from DAS on behalf of the other state agencies as full compliance with the law.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair
Janet Carl, Vice Chair
Gerald Sullivan
Betsy Roe
John Walsh
Patricia Harper

Submitted by: W. Charles Smithson, Board Legal Counsel

¹ The Board understands that for IowaAccess projects the agencies do not actually receive the funding. Rather, the funding is provided to the Iowa Technology Enterprise of DAS who then provides services to the agencies. Similarly, some of the projects under the Vertical Infrastructure Advisory Committee are approved for funding with the money going to the General Services Enterprise of DAS and the agencies then receiving the services.

²The Government Oversight Committee has determined that it will not require agencies to submit a separate report to the Committee. Rather, the Committee will accept filings made to the Ethics Board as compliance with the disclosure requirements of the law.